

AO 91 (Rev. 02/09) Criminal Complaint

United States District Court
Southern District of Texas
FILED**SEALED**

UNITED STATES DISTRICT COURT

SEP 15 2016

for the

Southern District of Texas

Clerk of Court

United States of America)

v.)

Winston Montalvo GARZA YOB: 1980 / USC)

Rafael GARZA YOB: 1979 / USC)

Case No. M-16-1722-M)

Defendant)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of 09/04/2016 in the county of Hidalgo in the Southern District ofTexas, the defendant violated Title 18 U. S. C. § Section 922 (g)(1)

, an offense described as follows:

The defendant(s), did knowingly and unlawfully possess a firearm that had previously traveled in and affected interstate commerce, after being convicted in a court of law for a felony crime punishable by imprisonment for a term exceeding one year.

This criminal complaint is based on these facts:

SEE ATTACHMENT A

☒ Continued on the attached sheet.Reviewed by: Linda Riquenez, AUSA
9/15/16

Complainant's signature

Carlos M. Delgado, Jr, ATF Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date:

September 15, 2016
12:07 pm

City and state:

McAllen, Texas

Judge's signature

Dorina Ramos, U.S. Magistrate Judge

Printed name and title

ATTACHMENT A

I, Carlos M. Delgado, Jr, being duly sworn, do hereby state that I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), a Division of the United States Department of Justice, and have been so employed since March 23, 2014. As a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives, I am vested with the authority to investigate violations of Federal laws, including Titles 18 and 26 of the United States Code.

This affidavit is in support of a criminal complaint charging Winston Montalvo GARZA and Rafael GARZA, hereinafter referred to as "W. GARZA" and "R. GARZA," respectively, with the criminal violation set forth in Attachment A. The evidence available to me demonstrates that there is probable cause that W. GARZA and R. GARZA have violated Title 18 U.S.C Section 922(g)(1) which provides as follows:

It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Further, the Affiant states as follows:

On September 4, 2016, your affiant was informed by United States Fish and Wildlife Service (USFWS) Special Agents (S/As) that on the aforementioned date, USFWS S/As while conducting routine hunting license checks in the area of mile 8 (eight) and 9 (nine) and Iowa Rd., Mission, TX, made contact with two (2) individuals later identified as W. GARZA and R. GARZA. As USFWS S/As approached and identified themselves as law enforcement officers, R. GARZA was observed by a USFWS S/A hurriedly walking away from USFWS S/As, turning back to look at USFWS S/As, and then pulling a firearm out of his waistband and handing the firearm to his brother W. GARZA who was on the other side of a fence located on the property. W. GARZA upon receiving the firearm, placed it in his waistband, turned away from USFWS S/As and hurriedly walked away. A USFWS S/A quickly called for W. GARZA to return to the fence and noted that both W. GARZA and R. GARZA were nervous. A USFWS S/A asked W. GARZA to hand him the firearm and inquired if W. GARZA was the owner of the firearm. W. GARZA stated that the pistol belonged to his wife, who was not currently on the property. R. GARZA then stated to a USFWS S/A that he was only temporarily holding the firearm for his brother W. GARZA, while W. GARZA jumped a fence. USFWS asked W. GARZA and R. GARZA if they had criminal records, to which the brothers answered "Yes." USFWS S/As requested and received identifiers from W. GARZA and R. GARZA and subsequently executed a query that confirmed W. GARZA and R. GARZA were indeed previously convicted felons. USFWS S/As called Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) S/A Carlos M. Delgado, Jr. in order to relay details of the investigation. USFWS S/As on scene subsequently made a determination to seize the aforementioned firearm, one (1) Smith and Wesson, model SD9WE, 9 mm in caliber, pistol, bearing Serial Number (S/N) FWZ1497.

ATTACHMENT A

During the week of September 5-9, 2016, ATF S/A Delgado requested and received certified copies of Judgment and Conviction documents related to W. GARZA and R. GARZA from the 389th Judicial District Court in Edinburg, Hidalgo County, TX. It was noted that on June 23, 2011, W. GARZA was convicted of Assault Against Family Member by Impeding Breathing / Circulation, a 3rd Degree Felony, for which he was sentenced to 5 years of probation. It was further noted that on October 9, 2001, R. GARZA was convicted of Escape, a 3rd Degree Felony, for which he was sentenced to 10 years of probation. On January 15, 2003, R. GARZA's term of probation was subsequently revoked and he was sentenced to 3 years in prison.

On September 7, 2016, your affiant spoke with ATF S/A Patrick Briody, who is a recognized expert in the interstate and foreign commerce travel of firearms and ammunition. Based on the information provided to SA Briody about the firearm possessed by W. GARZA and R. GARZA, SA Briody stated the firearm was manufactured outside of the State of Texas and therefore, previously traveled in interstate or foreign commerce at sometime prior to being possessed by any person in the State of Texas.



Carlos M. Delgado, Jr, ATF Special Agent

Sworn to before me and subscribed in my presence,



Donna Ramos, U.S. Magistrate Judge

